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December 6, 2018

Via Hand Delivery, U.S. Mail and Email

The Honorable Hugh Weathers  
Commissioner of Agriculture  
South Carolina Department of Agriculture  
1200 Senate Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201  
hweathe@scda.sc.gov

In re: South Carolina Freedom of Information Act Request

Dear Commissioner Weathers,

I am writing on behalf of my client, Public Access to Public Records (PAPR), to request the disclosure of public records pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10 et seq.

Enclosed as **Exhibit A** is PAPR's public records request to you and your office. Please allow me to direct your attention to several items relevant to this request.

First, you are required to respond within 10 days, unless the requested record is more than 24 months old as of the date of this letter, in which case you have 20 days (excluding Saturdays, Sundays, and legal holidays) to respond. See S.C. Code Ann. § 30-4-30(C). By my calculation, your response is due on or before **December 20, 2018**.

Second, you should take notice of the definitions and instructions sections preceding my client's request. Those sections are part of our good-faith effort to provide a clear, specific request for the public records we expect to receive. It is *not* boilerplate language to be ignored and my client may insist on compliance with the definitions and instructions contained in this request.

Third, many of the records sought through this request are electronically stored information (ESI). As explained in the definitions and instructions to this request, PAPR requires these records be produced in their electronic or "native" form—not printed and produced as paper copies. My client believes it has a legal right to receive ESI, but also that producing ESI is a less costly and less burdensome way to provide citizens with information about their government. Accordingly, when a record exists in ESI and paper form, my client only seeks disclosure of the responsive ESI.

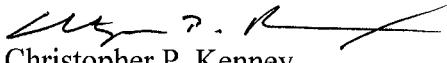
Fourth, please consider waiving any fee associated with responding to this request. The FOIA authorizes you to furnish records "without charge or at a reduced charge where the agency

determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." S.C. Code Ann. § 30-4-30(B). PAPR is a non-profit organization committed to promoting public access to public records and strengthening the FOIA and other public disclosure laws that enable citizens to exercise their right to know what their government is doing. In furtherance of this mission, PAPR intends to make these records available to the public in a free, searchable, online database. In light of this public purpose, please consider exercising your discretion under the FOIA to waive any fees associated with this request.

PAPR is eager to work with you and your office to help you fulfill this request. Please do not hesitate to contact me if you would like to discuss this request prior to your response deadline.

With warm personal regards, I am

Sincerely,



Christopher P. Kenney

CPK/hwt  
Enclosure

# Exhibit A

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

This is a request for public records pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10 et seq. Please read the definitions and instructions preceding the specific items requested as they are essential to understand the public records sought and the proper procedure when responding to this request.

## DEFINITIONS

All words and phrases utilized in this FOIA request shall be given their ordinary, dictionary and common-sense definitions. Additionally, the following terms shall mean:

“Communication” or “communications” means the written transmittal of information, facts, or ideas, including, without limitation, letters, correspondence, notes, memoranda, emails, text message, instant messages, telegrams, or any other written exchange of words.

“Documents” or “document” shall have the broadest meaning and include, without limitation, all writings of any nature whatsoever (including, specifically, all drafts); whether originals or copies, including all non-identical copies (whether different from the original because of notes made on or attached to them or otherwise); whether drafts, preliminary, proposed, or final versions; whether printed, recorded, produced, or reproduced by any other mechanical or electronic process; and whether printed, written, or electronically created. By way of example (not limitation), documents include contracts, agreements, communications, records, reports, studies, memoranda, books, diaries, logs, appraisals, forecasts, statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, maps, diagrams, blueprints, tables, indices, pictures, recordings, tapes, microfilms, charges, accounts, minutes, brochures, pamphlets, circulars, trade letters, press releases, stenographic, handwritten or other notes, checks, check stubs, receipts, bills, invoices, or vouchers. Documents includes ESI.

# Exhibit A

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

“ESI” means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it. By way of example (not limitation), ESI includes emails, instant messages, text messages, word processing documents (e.g., Microsoft Word files), worksheets (e.g., Microsoft Excel, .csv, or Quickbooks files), presentations (e.g., Power Point presentation), or any document stored on magnetic tapes, disks, flash drives, solid state memory drives, CD-ROMS, or a computer or memory system. ESI is a document.

“Emails” *includes* personal email addresses (e.g., gmail, yahoo, Hotmail, AOL, private business address, etc.) if used to communicate or transmit information responsive to one or more of the requests below.

“2018 Hemp Pilot Program” means the 2018 South Carolina Industrial Hemp Pilot Program initiated by the South Carolina Department of Agriculture.

“2019 Hemp Pilot Program” means the 2019 South Carolina Industrial Hemp Pilot Program initiated and managed by the South Carolina Department of Agriculture.

“PAPR” means Public Access to Public Records, a non-profit organization incorporated under the laws of the State of South Carolina acting through its directors and attorneys.

“Person” or “persons” means any natural person, proprietorship, private corporation, public corporation, municipal corporation, state government, local government, governmental agency, political subdivision, partnership, group, association, or other business or organization.

“Public record” or “public records” has the meaning provided in South Carolina Code § 30-4-20(c), as amended.

# **Exhibit A**

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

“Relating to” means embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

“Text message” or “text messages” *include* messages sent or received on a personal mobile phone or other electronic device if used to communicate or transmit information responsive to one or more of the requests below.

“Hemp farmer” means any person or entity that holds him or herself out as a farmer with interest in planting, growing, harvesting and otherwise farming hemp in the State of South Carolina.

“Applicant” means any person or entity that completed, initiated or otherwise applied for “Hemp farmer” status in the 2018 or 2019 Hemp Pilot programs.

“Applications” means all documentation presented to the South Carolina Department of Agriculture, whether complete or not, pertaining to permission to take part in the 2018 or 2019 Hemp Pilot programs.

## **INSTRUCTIONS**

You are required to respond within 10 days, unless the requested record is more than 24 months old as of the date of this request, in which case you have 20 days (excluding Saturdays, Sundays, and legal holidays) to respond. See S.C. Code Ann. § 30-4-30(C). Your response should notify PAPR as to the availability of the requested records and whether each request is granted. Failure to respond will be deemed an approval as to all items requested not subject to an exemption allowed by law. Id. If this request is granted, the responsive record(s) must be furnished or made available for inspection or copying no later than 30 calendar days from the date of your response,

# Exhibit A

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

unless the record is more than 24 months old, in which case the record must be provided within 35 calendar days from the date of your determination. Id.

Certain matters are exempt from public disclosure. See id. § 30-4-40(a). If a requested item is exempt from public disclosure, PAPR asks that you exercise your authority under the FOIA and waive the exemption. See id. (“A public body *may but is not required* to exempt from disclosure...” (emphasis added)). If a public record contains exempt and nonexempt material, you must separate the exempt and nonexempt material and produce the nonexempt material. Id. § 30-4-40(b). If you chose to invoke an exemption, you should do so expressly, in writing, and in a manner that specifically identifies what is being withheld so PAPR can evaluate the propriety of the exemption. Similarly, if you invoke a claim of “privileged communication”, “protected information”, or “protected identify”, you should do so with specificity. See id. § 30-4-40(c). Claims of privilege should also describe the document withheld, the date of the communication, and the identity of all persons sending and receiving the purportedly privileged communication.

If you request fees in exchange for the disclosure of responsive public records, those fees must be based on a uniform, established schedule that does not exceed the actual cost of searching for or making copies of responsive public records. See S.C. Code Ann. § 30-4-30(B). “Fees may not be charged for examination and review to determine if the documents are subject to disclosure.” Id. Please note you have a legal obligation to furnish public records “at the lowest possible cost to the person requesting the records.” Id.

PAPR will pay any reasonable fees incurred at the time of production. See id. PAPR will not pay fees incurred by you or your office pursuant to the production of public records in a form contrary to the form requested. For example, where PAPR requests ESI, it will not pay copying

# Exhibit A

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

fees if your office prints the responsive ESI in lieu of responding as requested. See id. (“Copy charges may not apply to records that are transmitted in an electronic format.”).

You should produce responsive public records *either* as they are kept in the ordinary course of business (*i.e.*, organized in whatever file structure or system as your office maintains them) *or* organized and labeled to correspond to the numbered categories in this request. When the public records responsive to this request include ESI, you should produce those records, without manipulation, in their native, electronic format (*e.g.*, .pst, .doc, .docx, .xls, .ppt, etc.) along with all passwords necessary to access the documents. If you choose to process ESI prior to production, produce single-page images along with an accompanying load file, full OCR text, and metadata. Native files should still be produced.

If you prefer to make responsive public records available to PAPR to inspect and copy, PAPR is prepared to collect and copy records at no cost to your office. To pursue this procedure, your response should specifically identify the records being made available, their location, the type of records, and the system or systems on which those records reside (*e.g.*, approximately 500 paper records in file cabinets located in Room 101 or approximately 5 GB of data located in two file folders on John Doe’s computer terminal). You should also propose dates and times when the records will be made accessible for inspection and copying. Failure to respond with sufficient specificity will be treated as a failure to respond.

Public records should not be redacted except as expressly allowed by law.

# **Exhibit A**

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

## **LIMITATION AS TO SCOPE**

The following FOIA request is limited to the period from September 10, 2014 through the date of this request. If a requested public record exists *both* as ESI and as a paper record, this FOIA request is limited to only request disclosure of ESI.

## **PUBLIC RECORDS REQUEST**

This FOIA request requires disclosure of the following public records:

1. All meeting notes, meeting minutes, reports, presentations, checklists, or other written communications regarding the establishment of the 2018 Hemp Pilot Program.
2. All documentation pertaining to changes to the 2019 Hemp Pilot Program compared to the 2018 Hemp Pilot Program, including drafts, notes, meeting minutes, reports, email, or other documentation evidencing any alterations or edits from the 2018 to 2019 Hemp Pilot Program.
3. A copy of all applications by any applicant to the 2018 Hemp Pilot Program.
4. A copy of all applications by any applicant to the 2019 Hemp Pilot Program.
5. A list of all applicants for the 2018 Hemp Pilot Program.
6. A list of all applicants for the 2019 Hemp Pilot Program.
7. All lists, documents, communications, notes, reports, summaries, or other tangible item that depicts the decision-making process for the 20 Hemp farmers finally selected for the 2018 Hemp Pilot Program.
8. All policies, procedures, written documentation or other tangible items referred to in determining the farmers that were involved in the 2018 Hemp Pilot Program.

# **Exhibit A**

South Carolina Freedom of Information Act Request  
Public Access Public Records (PAPR)  
December 6, 2018

9. All communications, including email, texts, written documentation or evidence of oral communications pertaining to the selection of the 2018 Hemp Pilot Program.

10. All communications, including email, texts, written documentation or other pertaining to applicants that were not selected for the 2018 Hemp Pilot Program.

11. All notes, communications, meeting minutes, or other documentation pertaining to the evaluation and final selection of the 20 Hemp farmers selected to participate in the 2018 Hemp Pilot Program.

12. All communications, notes or other documentation between Vanessa Elsalah (velsalah@scda.sc.gov) and any applicant for the 2018 Hemp Pilot Program.

13. All communications, notes or other documentation between Vanessa Elsalah (velsalah@scda.sc.gov) and any applicant for the 2019 Hemp Pilot Program.

14. A list of all South Carolina Department of Agriculture employees that participated or were involved in the 2018 Hemp Pilot Program or 2019 Hemp Pilot Program. The list should include name, location, email address and title.

15. All communications between any South Carolina Department of Agriculture employee and any University official, or other third-party person or entity consulted or communicated with pertaining to the 2018 Hemp Pilot Program or 2019 Hemp Pilot Program.

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